



LGIT'S ROLL CALL REPORTER **JANUARY 2006**

DETERMINING WHETHER REASONABLE, ARTICULABLE SUSPICION EXISTS TO SUPPORT A *TERRY* STOP

QUESTION: WHAT ARE SOME OF THE FACTORS COURTS WILL CONSIDER IN DETERMINING WHETHER THERE WAS REASONABLE, ARTICULABLE SUSPICION TO SUPPORT A *TERRY* STOP?

ANSWER: MARYLAND COURTS ORDINARILY TAKE INTO ACCOUNT THE FOLLOWING FACTORS IN DETERMINING WHETHER THERE WAS REASONABLE, ARTICULABLE SUSPICION TO SUPPORT A *TERRY* STOP: (1) THE PARTICULARITY OF THE DESCRIPTION OF THE OFFENDER OR THE VEHICLE IN WHICH HE FLED; (2) THE SIZE OF THE AREA IN WHICH THE OFFENDER MIGHT BE FOUND; (3) THE NUMBER OF PERSONS ABOUT IN THAT AREA; (4) THE KNOWN OR PROBABLE DIRECTION OF THE OFFENDER'S FLIGHT; (5) OBSERVED ACTIVITY OF THE PARTICULAR PERSON STOPPED; AND (6) KNOWLEDGE OR SUSPICION THAT THE PERSON OR VEHICLE STOPPED HAS BEEN INVOLVED IN OTHER CRIMINALITY OF THE TYPE UNDER INVESTIGATION.

**CASE: *Sykes v. State*, No. 2818, September Term, 2004
Court of Special Appeals of Maryland, December 7, 2005**

Under the 1968 Supreme Court decision in *Terry v. Ohio*, a brief investigatory stop of an individual by a police officer meets the reasonableness requirement of the Fourth Amendment when it is based upon reasonable, articulable suspicion that a crime is being committed, has been committed, or is about to be committed by the individual stopped. The reasonable, articulable suspicion standard requires less evidence than probable cause, but requires more than a mere "hunch" or guess that the stopped individual was involved in criminal activity. When courts decide whether an officer had reasonable suspicion to make an investigative stop, they must examine the "totality of the circumstances" of the events surrounding the stop. In other words, courts must look at the entire picture, and not just certain aspects of the stop in isolation.

Recently, in *Sykes v. State*, the Maryland Court of Special Appeals examined the factors that courts consider when determining if the totality of the circumstances demonstrates that the officer had reasonable, articulable suspicion to make a *Terry* stop. The Court examined these factors in circumstances where police officers stopped two individuals they believed matched the description of robbery suspects given by a police dispatcher. The Court recounted the following facts as described by the arresting officer: On January 30, 2004,

Baltimore County Police Officer Donald Anderson had just executed a search warrant, when he heard a report over the dispatch of an armed robbery at 12 Mountbatten Court in Woodlawn. According to the dispatch, the robbery had occurred at 9:15 p.m., and the dispatch was broadcast at 9:21 p.m. Officer Anderson had been assigned to the Woodlawn area for seven years, and knew that the area consisted of many residential apartment complexes. He also was familiar with the footpaths in wooded areas behind the complexes that people used to go from one complex to another, and that the residents in that area were predominantly African-American. In the 9:21 p.m. broadcast, the dispatcher said there were two armed robbers. They were described as black males; teenagers; 5' 11"; wearing all black clothing; running through Mountbatten Court, which is a dead-end apartment complex, and across Essex Road. Subsequent broadcast descriptions by the dispatcher stated that one suspect was wearing a long black coat, and that two black males were seen running on the trail behind the Duke of Windsor apartment complex.

Based on Officer Anderson's knowledge of the area, he believed that the suspects might have fled by way of the trails that ran through the wooded areas behind the apartment complex. A few minutes before 9:34 p.m., Officer Anderson saw two black men, later identified as William Sykes and Theodore Dargon, walking out from a dimly lit area behind an apartment building, about 20 feet from the officers. This area was in close proximity to the scene of the robbery. Dargon was wearing blue jeans and a black sweatshirt; Sykes was wearing blue jeans and a green military-style jacket. Dargon is 5' 10", 180 lbs.; Sykes is 6', 180 lbs. Both men were 26 years old. Officer Anderson, however, believed Dargon looked younger than his age, more like a teenager. He considered Sykes to be a dark-completed African-American; he considered Dargon to be medium-completed.

The officers exited the police car, with their guns drawn, and ordered the men to place their hands on the car. The men appeared "startled" upon seeing the police, and asked why the officers were speaking to them. They did not attempt to flee. The officers told them they matched the description of two armed robbery suspects. Both men were cooperative. They said they had been walking from Dargon's apartment, which was nearby. Officer Anderson obtained an identification card from Sykes, and then immediately performed a patdown. He employed what he called the standard patdown procedure used by the Baltimore County Police Department, which included "grabbing, crumpling, and rolling" the suspect's outer clothing during the patdown. As his hand reached Sykes's right outer coat pocket, Officer Anderson heard a crinkling sound he associated with a plastic bag and felt two objects that, based upon his knowledge, training, and experience as a narcotics officer, he recognized by feel as "decks" of illegal drugs. He later testified that a "deck" is a plastic bag containing about 20 vials of cocaine or heroin. Officer Anderson retrieved the objects from Sykes's pocket and saw that they were in fact decks of cocaine. He placed Sykes under arrest. A show-up was conducted soon after the men were arrested, and the robbery victim said they were not the robbers.

Sykes was charged with possession of cocaine with intent to distribute and related charges. Before trial, he filed a motion to suppress the seized evidence, contending, in essence, that neither he nor Dargon matched the description of the robbery suspects, and did not act in a way that would arouse suspicion. Additionally, Sykes argued that he was in a heavily

populated area where a majority of the residents are African-American. Sykes's motion was denied and he subsequently was convicted and sentenced.

On appeal, the Court of Special Appeals considered whether the circuit court had erred in denying Sykes's Motion to Suppress. In ruling that the circuit court had not erred, the Court of Special Appeals took into account the factors previously utilized by Maryland's appellate courts in determining if an officer had reasonable suspicion to make an investigative stop. These include: (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity of the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

In the *Sykes* case, the evidence showed Officer Anderson's knowledge of the particular description of the armed robbery suspects based upon the initial broadcasts. The record also showed that the men generally fit the description of the suspects. In addition, the location where the men were spotted was consistent with the broadcast description, and, based upon Officer Anderson's knowledge of the area, was in the probable direction of the robbers' flight. Also, taking into account that the robbers had fled on foot, and that Sykes and Dargon were stopped within 16 minutes after the crime, the size of the area in which the robbers might have been found was relatively small. Finally, Officer Anderson testified that the men appeared "startled" upon seeing the police. For all of these reasons, court agreed with the circuit court that the *Terry* stop was based upon reasonable, articulable suspicion that Sykes and Dargon had committed the armed robbery.

NOTE: Clearly, when courts are deciding whether officers made a lawful stop of someone who they believe matches the description of a suspect given in a radio dispatch, two critical issues they will consider is how closely the stopped individual resembled the dispatcher's description of the suspect, as well as how close the stop is made relative to the time and place of the crime. In other words, courts will look to see if the officer had sufficient evidence that the stopped individual resembled the dispatcher's description of the suspect's height, race, age, weight, hairstyle, clothing, etc., as well as whether the stopped individual was found nearby the crime scene soon after the crime occurred. In short, the closer the match is between the suspect and the information in the dispatch, the stronger the officer's stop. This underscores the need for both 911 operators and officers taking the victim's initial complaint to draw out as much *detailed* information as possible about the appearance of the suspects, and the time and place of the crime. It is also important for the officers making the stop to provide, in their reports and courtroom testimony, as much *detail* as possible as to how the stopped individual matched the information provided in the dispatch.

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